54

SUPREME COURT OF THE U. STATES.

No. 87.

STEPHEN COCKE, FOR THE USE OF THE COMMERCIAL BANK OF COLUMBUS, MISSISSIPPI, PL'TIFF IN ERROR,

vs.

JOSEPH A. HALSEY ET AL.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of Error	1	3
Citation and Service	2	3, 4
Fieri Facias	3	4
Marshal's Return	4	5
Replevin Bond	5	5
Issue Joined	6	6
Jury Sworn—Verdict	7	7
Bill of Exceptions tendered by Claimant	7	7
Judgment	19	14
Clerk's Certificate	20	15

Langtree & O'Sullivan, Print.—1840.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you, or some of you, between Joseph A. Halsey, John Utter, Charles M. King, and William S. Utter, plaintiffs, and Stephen Cocke, for the use of the Commercial Bank of Columbus, Mississippi, defendants, a manifest error hath happened, to the great damage of the said Stephen Cocke, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States, the sixty-third.

[L. S.]

WM. BURNS, *Clerk*
Circuit Court of U. S. So. Dist. of Miss.

Issued November 29, 1839.

Writ of error, filed November, 29, 1829.

WM. BURNS, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To Joseph A. Halsey, John Utter, Charles M. King, and William S. Utter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Mississippi, wherein Stephen Cocke, for the use of the Commercial Bank of Columbus, Mississippi, is plaintiff, and you

are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and in the sixty-third year of the independence of the United States.

S. J. GHOLSON.

We acknowledge due service of the above citation.

TUCKER & BUTTERWORTH,
Attorneys for Plaintiffs.

January 20, 1840.

HALSEY, UTTER, & Co., }
vs. }
STEPHEN COCKE, claimant. }

Pleas before the honorable Samuel J. Gholson, District Judge of the United States, at a circuit court of the United States, held at Jackson, in and for the ninth circuit and southern district of Mississippi, on the first Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and thirty-nine, the following execution of fieri facias issued from the clerk's office of the circuit court of the United States for the district of Mississippi, upon a judgment of record in said court in favor of Halsey, Utter, & Co. against James Carter & Co.; which execution is in the words and figures following, to wit:

CIRCUIT COURT OF UNITED STATES,
Southern District of Mississippi, sct:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, as before we commanded, that of the goods and chattels, lands, and tenements of James Carter and Lewis Grigsby, (late partners, under the firm of James Carter & Co.,) late of your district, you cause to be made the sum of twenty-five hundred and ninety-four dollars and sixty-six cents, which Joseph A. Halsey, John N. Utter, Charles M. King, and William S. Utter, (under the firm of "Halsey, Utter, & Co.,") lately in our circuit court for the district aforesaid, have recovered against them for their damages, which they have sustained by reason of the non-performance of a certain promise and assumption by the said James Carter & Co. to

the said Halsey, Utter, & Co., lately made, with interest on the said sum, at 8 per centum per annum, from the 23d day of May, 1838, until paid; also the sum of fifty-seven dollars sixteen and two-third cents for costs by them about their suit in that behalf expended, whereof the said James Carter & Co. are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court on the first Monday of May next, to render unto the said Halsey, Utter, & Co. for their damages and costs aforesaid; and have then there this writ.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Jackson, the [L. S.] first Monday of November, A. D. one thousand eight hundred and thirty-eight, and in the sixty-third year of the independence of the United States of America.

Issued the 2d day of February, 1839.

WM. BURNS, *Clerk.*

Marshal's Return.

Levied this execution on the 1st day of March, 1839, on the following lots in the town of Columbus, to wit, No. 1, 2, 3, 4, and 5, in square No. 10, denominated as New Town; also the S. ½ of W. ½ S. W. ¼ of sec. 24, T. 18, So. range 18 west; N. ½, W. ½, N. W. ¼ of sec. 25, T. 18 So. range 18 west; S. W. ¼ N. E. ¼ of sec. 24, T. 18 So. range 18 west; and also the following parcels of land, to wit, E. ½ N. E. ¼ the W. ½ N. E. ¼ sec. 7, T. 18 No. range 18 east; the W. ½ S. E. ¼ sec. 6; lots No. 1 and 2 in sec. 8, T. 18 N. range 18 east; lots No. 1 and 4 in sec. 27; lots No. 5, 6, 7, and 8 in sec. 27; and lots 2 and 3 in sec. 27, same township and range, containing 648 acres, more or less; and also the following negroes, slaves for life, to wit, one negro woman named Leantha, one negro girl named Dinah, one negro girl named Esther, and one negro girl named Mary. Levied on the above as the property of the said defendant, James Carter. Sale of the real estate suspended by direction of plaintiff's attorney, as endorsed hereon. The personal property levied on, claimed by Stephen Cocke. Bond given according to law, to try title to the same, which is herewith returned. I have estimated the value of said personal property at the sum of eighteen hundred dollars. Sale of said personal property postponed.

A. G. WEIR,
Marshal Northern District.

Whereupon the marshal of the northern district aforesaid filed in the clerk's office of the court aforesaid the following bond; which is in the words and figures following, to wit:

Bond.

Know all men by these presents, that I, Stephen Cocke, of the county of Lowndes, and State of Mississippi, am held and firmly

bound unto Joseph A. Halsey, John N. Utter, Charles M. King, and William S. Utter in the penal sum of thirty-six hundred dollars, which payment well and truly to be made and done, I bind myself, my heirs, executors, and administrators firmly by these presents. Sealed with my seal, and dated this first day of May, 1839.

The condition of the above obligation is such that, whereas Adolphus G. Weir, mashal of the northern district of Mississippi, by virtue of an execution issued from out of the circuit court of the United States for the district of Mississippi, in favor of the above named Joseph A. Halsey, John N. Utter, Charles M. King, and William S. Utter, against James Carter and Lewis Grigsby, for the sum of twenty-five hundred and ninety-four dollars and sixty-six cents damages, and fifty-seven dollars and sixteen and two-third cents costs of suit, hath levied on the following negro slaves, as the property of the above named James Carter, one of said defendants, to wit, a negro woman named Leantha, about thirty-five years of age; a negro girl named Dianah, about twenty-years of age; a negro girl named Esther, about nine years of age; and a negro girl named Mary, about three years of age; which said property the said Adolphus G. Weir, as marshal as aforesaid, according to the statute in such case made and provided, hath valued as follows, to wit, Leantha at the sum of six hundred dollars; Dinah at the sum of six hundred dollars; Esther at the sum of four hundred dollars; and Mary at the sum of two hundred dollars; and the said Stephen Cocke, as trustee for the Commercial Bank of Columbus, Mississippi, according to the act in such case made and provided, having claimed the said property to be the property of him, the said Stephen Cocke, and that the same is not subject to be sold to satisfy said execution.

Now, therefore, if the said Stephen Cocke shall pay to the said plaintiffs in execution all such damages as shall be assessed against him, in case his claim shall appear to have been made for fraudulent purposes, or for delay, and if the said Stephen Cocke shall also well and truly deliver the said property to the said marshal or other lawful officer of the said claim to said property, shall be determined against them, then the above obligation to be void, otherwise to be and remain in full force and virtue.

STEPHEN COCKE. [SEAL.]

I do hereby agree to accept the foregoing bond and condition, waiving affidavit and security, as required by law.

SAM. F. BUTTERWORTH,
Attorney for Plaintiffs.

And afterwards, to wit, at the May term of the said court, in the year of our Lord one thousand eight hundred and thirty-nine, the following issue was made up between the plaintiffs in the aforesaid execution, and Stephen Cocke, the claimant of the aforesaid property, according to the statute in such case made and provided, to wit:

And the said plaintiffs come into court now here, and state that

the said negroes mentioned in the condition of the within and foregoing bond, are the property of the said James Carter, subject to the execution of the said plaintiffs, and liable to be sold to satisfy the damages and costs therein mentioned; and of this they put themselves on the country.

TUCKER & BUTTERWORTH,
Attorneys for Plaintiffs.

And the said defendant doth the like.

DAVIS, COCKE, & GOODWIN,
For Defendant.

And now, to wit, at a circuit court of the United States, held as aforesaid, on the 22d day of November, in the year of our Lord one thousand eight hundred and thirty-nine, until which time this cause was regularly continued, came the parties aforesaid, by their respective attorneys aforesaid, and a jury being called, came, to wit:

Joseph Dunbar,	J. B. Fox,
Colin Pearse,	Wm. Albertson,
Howell Hinds,	J. R. Aikin,
Charles Moore,	A. G. Shaw,
L. C. Sayre,	Wm. Wade,
Wm. Bretton, and	J. C. Miller,

who, being empannelled, tried, and sworn to try the issue between the parties aforesaid, say, upon their oath, that the negro slaves, Leantha, Dinah, Esther, and Mary, levied on by virtue of the plaintiff's execution, and specified in the marshal's return thereon, *is* not the property of the said Stephen Cocke, the claimant aforesaid, but are the property of James Carter, one of the defendants in the execution aforesaid, and subject thereto as the said plaintiffs in said pleadings hath alleged; and they assess the whole value of the slaves aforesaid to the sum of two thousand one hundred dollars.

Bill of exceptions, tendered by the claimant, to wit:

Joseph A. Halsey, John N. Utter, Charles M. King, and William S. Utter, *vs.* Stephen Cocke, Trustee for the Commercial Bank of Columbus, State of Mississippi.	Interpleader.

Be it remembered, that on this twenty-second day of November, eighteen hundred and thirty-nine, of the term of said court, before

the Honorable Samuel J. Gholson, presiding judge of said court, the jury being *empanelled* to try the issue joined in said cause, the parties, by their attornies, submitted the following agreement, to wit:

HALSEY, UTTER & Co.
vs.
STEPHEN COCKE, Claimant.

The following is a statement of facts agreed upon by the counsel in the above stated case at issue at this term, to wit: On the 24th day of March, 1838, James Carter & Co. executed a deed in trust to William L. Moore, trustee, for the purpose of securing the payment of certain sums of money to the Commercial Bank of Columbus, by which deed the said James Carter & Co. conveyed, among other things, the following property, to wit: Leantha, Dinah, Esther, and Mary, negroes, slaves for life, then being in Lowndes county; this deed was properly acknowledged before Eli Abbot, a justice of the peace, on the 29th day of March, 1838, and delivered to one William P. Puller, who had been appointed clerk pro tem. of the probates court of the county of Lowndes aforesaid, and who recorded the same in the office of the clerk of probates for said county, and endorsed on said deed a certificate of record, signed Wm. P. Puller, clerk pro tem., which deed and certificate are in the words and figures following, to wit:

This indenture, made and entered into this the 24th day of March, in the year of our Lord one thousand eight hundred and thirty-eight, between James Carter and Lewis Grigsby, of the county of Lowndes and State of Mississippi, of the first part, William L. Moore, of the same county and State, of the second part, and the Commercial Bank, of the State of Mississippi, of the third part, witnesseth, that whereas the said parties of the first part, merchants and partners in trade under the name, firm, and style of James Carter & Co. are justly indebted to the said party of the third part in the sum of eleven thousand seven hundred and eighty-four dollars and six cents, by a certain promissory note bearing date March twelfth, in the year of our Lord one thousand eight hundred and thirty-eight, due and payable, twelve months after the date thereof, to the said party of the third part, or order, at their banking-house in Columbus, which said promissory is also executed by one Alexander Carter, and by the said William L. Moore; and also in the sum of seventeen thousand six hundred and eleven dollars, by a certain other promissory note bearing date March twelfth, in the year of our Lord one thousand eight hundred and thirty-eight, due and payable twelve months after the date thereof to the said party of the third part, or order, at their banking-house in Columbus, which said last mentioned promissory note is also executed by Alexander Carter, William L. Moore, and one Reuben H. Grant; and whereas the said debts were made and contracted for the sole accommodation and benefit of the said party of the first part, and they the said party of the first part are

willing and desirous to secure to the said party of the third part the faithful and punctual payment of the said sums of money in the above mentioned promissory notes specified. Now the said party of the first part, for and in consideration of the premises, and of the sum of one dollar to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, and set over, and by these presents do bargain, sell, assign, transfer, set over, and deliver unto the said party of the second part, all and singular the books, book debts, accounts, bills, bonds, notes, debts, and evidences of debts due or belonging to or in any wise the property of the said firm of James Carter & Co., and all interest therein due, or to become due, and owing, and also a certain writing obligatory, made by Reuben H. Grant and Jefferson Clements, in favor of the said party of the first part, for the sum of seven thousand seven hundred and thirty-one dollars, to be paid to the said party of the first part in lands lying in the counties of Noxubee, Kemper, and Lauderdale, at cash prices, on or before the first day of July next, and all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of them, the said party of the first part, of, unto, or out of the said books, book debts, accounts, bills, bonds, notes, debts, and evidences of debt, and the said writing obligatory; to have, hold, and receive, all and singular the premises hereby assigned or intended so to be, unto the said party of the second part, his executors or administrators, upon the trust hereinafter mentioned.

And for the better and more effectually enabling the said party of the second part, his executors or administrators, to recover and receive all and singular the said premises hereby assigned to, and for the effecting, performing, and fulfilling the trust hereinafter mentioned, the said party of the first part hath made, constituted, and appointed, and in their stead put, and by these presents do make, constitute, appoint, and in their stead put said party of the second part, his executors or administrators, the true and lawful attorney and attorneys, irrevocable of them the said parties of the first part, to ask, demand, and receive all such moneys as are now due, or which may hereafter become due, upon or by reason of any of the premises above mentioned; and also to receive and take of and from the said Reuben H. Grant and Jefferson Clements, a title or titles in fee simple, in and to all such lands as the said Grant and Clements are bound to convey by the said writing obligatory upon the trust, and for the purposes thereinafter mentioned; and the said James Carter, one of the parties of the first part, for and in consideration of the premises, and of the sum of one dollar to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoff, convey, and confirm, unto the said party

of the second part, in fee simple, those certain pieces or parcels of ground lying and being in the town of Columbus, in the county and State aforesaid, and in that part of Columbus, in the county and State aforesaid, and in that part of Columbus which is commonly denominated New Town, and better known, and more minutely described in the plan of said town as lots numbered one, two, three, four, and five, in block or square numbered ten, together with the buildings, improvements, and appurtenances thereunto belonging; and also those certain tracts, pieces, or parcels of ground, lying and being in the county of Lowndes, in the State of Mississippi, and known and designated in the public surveys as the south half of the west half of the southwest quarter of section twenty-four, in township eighteen south, range eighteen west; the north half of the west half of the northwest quarter of section twenty-five, in township eighteen south, range eighteen west, the southwest quarter of the northeast quarter of section twenty-four, in township eighteen south, range eighteen west, containing one hundred and twenty acres, more or less; also an undivided moiety, or half part of those certain tracts, pieces, or parcels of ground, lying and being in the county of Lowndes, in the State aforesaid, and known in the public surveys as the east half of the northeast quarter of section seven, in township eighteen north, in range eighteen east; the west half of the southeast quarter of section six; lots numbered one, two, in section eight, in township eighteen north, of range eighteen east; lots one and four, in section twenty-seven; lots five, six, seven, and eight, in section twenty-seven, and lots two and three, in section twenty-seven, in township eighteen north, range eighteen east, containing six hundred and forty-eight acres, more or less, now owned by the said James Carter and William L. Moore, as tenants in common; together with a moiety of all and singular the improvements and appurtenances thereunto belonging, and also the following negro slaves, to wit: a negro woman, named Leantha, about thirty-five years of age; a negro girl named Dinah, about twelve years of age; a negro girl named Esther, about nine years of age, and a negro girl named Mary, about three years of age. The said James doth also hereby transfer, assign, and set over, to the said party of the second part, his executors, administrators, or assigns, a certain bill of exchange drawn by him, the said James, on the said Lewis Grigsby, the other party of the first part, and by him accepted, bearing date the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and thirty-seven, drawn in favor of Alexander Carter, and by him endorsed, and also endorsed by others, due on the first day of February, in the year of our Lord one thousand eight hundred and thirty-eight, for the sum of two thousand and twenty-three dollars and fifty cents, negotiable and payable at the Branch Bank of the State of Alabama, at Mobile; also another bill of exchange, dated on the first day of January, in the year of our Lord one thousand eight hundred and thirty-eight, drawn by the same drawer, accepted by the same acceptor, payable to the same payee,

as the bill above mentioned, endorsed by Alexander Carter, William L. Moore, and others, negotiable and payable at the Bank of the State of Alabama, at Mobile, for the sum of two thousand and ten dollars and seventy-two cents.

To have and to hold, all and singular the above bargained premises, unto the said party of the second part, his heirs, executors, administrators, and assigns.

Upon trust, nevertheless, and it is fully understood by and between the parties to these presents, that this indenture is made upon express trust and confidence that the said party of the second part shall proceed forthwith to collect and reduce into cash all such accounts, book-debts, notes, bills, bonds, or other debts due, owing and belonging to the said James Carter & Co.; and by and with the consent and concurrence of the said party of the first part, and the president of the said party of the third part, to sell at private or public sale all or any part of the above bargained premises, as the said party of the first part shall, by and with the consent and concurrence of the said president, require to be sold, and the proceeds so by the said party of the second part made and collected, he, the said party of the second part, shall, as the proceeds shall come to his hands, pay over to the said party of the third part, and the said party of the third part shall receive the same as a payment or payments on the said promissory notes, and the payment, or payments so made, shall carry interest, from the time or times they are so made and paid over, until the said promissory notes shall become due; and if the said promissory notes shall be well and faithfully paid up and discharged, at or before the time when the said notes shall become due, either out of said proceeds, paid over as aforesaid, or by the said party of the first part, then, and in that case, this indenture shall become inoperative, from and at the time when the said promissory notes shall be so paid up and discharged; and in that case the said party of the second part hereby covenants with the said party of the first part, and with each of them, to transfer, assign, set over, and convey, to the said party of the first part, or to the said James Carter, (as they or he shall be entitled,) such part of the above bargained premises as shall then remain in the hands of him the said party of the second part. But if the said sums of money, in the said promissory notes specified, shall not be wholly paid on or by the time when the same shall become due and payable, then, and in that case, it is the object of these premises that the said party of the second part, his executors or administrators, shall, upon being thereunto required by the said party of the first part, and the said party of the third part, or by either of them, or by the president of the said party of the third part, sell at public auction to the highest bidder for cash, at the corner of Main and Market streets, in the town of Columbus, in the county of Lowndes aforesaid, having first given public notice of said sale for the space of thirty days, in one of the newspapers published in said town of Columbus, the whole of the above lands and negroes, or so much thereof as shall be sufficient to pay up and discharge the

said sums of money in the said promissory notes specified, as shall be unpaid, together with the interest due thereon, and the costs and charges of carrying these premises into effect; and the proceeds of said sale shall be in the first place applied to the payment of the costs and charges incurred by reason of carrying of these presents into effect, and then to the payment and discharge of the said sums of money in the said notes mentioned, and the interest due thereon, and the balance if any shall be paid over to the said party of the first part, or to him of the said party who shall be entitled to the same. It is agreed by and between the parties hereto that the said James Carter shall remain in the possession of the above bargained premises, saving and excepting the above mentioned books, book-debts, accounts, notes, bonds, bills of exchange, and writing obligatory, until the same shall be required to be sold under these premises.

It is further agreed by and between the said parties, that in the event that the said William L. Moore, the party of the second part, shall refuse at any time to act or shall move so that he cannot act, then the said William L. Moore may and shall, by and with the advice and consent of the president of the said party of the third part, convey the above bargained premises to some other person as trustee, to and for the effecting of the object and trust of these premises.

In testimony whereof the said parties have hereunto set their hands and seals, the day and year above written.

JAMES CARTER, [SEAL.]
LEWIS GRIGSBY, [SEAL.]
WILLIAM L. MOORE. [SEAL.]

THE STATE OF MISSISSIPPI, *Lowndes County, to wit:*

I, Eli Abbott, an acting justice of the peace in and for said county, do hereby certify that James Carter, Lewis Grigsby, and William L. Moore, acknowledge that they severally signed, sealed and delivered the foregoing deed of trust to the Commercial Bank of Columbus, Mississippi, on the day and year mentioned in the caption of said deed, and for the purpose therein expressed.

Given under my hand and seal, this twenty-fourth day of March, A. D. 1838.

ELI ABBOTT, [SEAL.]
Justice of the Peace.

Received in my office for record, on the 24th day of March, A. D. 1838.

WM. P. PULLER, *Clerk pro tem.*

THE STATE OF MISSISSIPPI, *Lowndes County.*

I, William P. Puller, clerk of probates for said county, do hereby certify that the foregoing trust deed was deposited in my office for record, on the 24th day of March, A. D. 1838; and the same, with

the certificate of acknowledgment and this certificate, have been duly recorded in book No. 9, pages 203, 4, 5, 6, and 7.

Given under my hand and seal of office, the 29th day of March, A. D. 1838.

WM. P. PULLER,
Clerk pro tem.

At the time this record and certificate were made by Wm. P. Puller, as clerk pro tem., one Robert D. Haden was the clerk of probate for the county of Lowndes, duly elected, qualified and sworn. Haden was duly elected in November, 1837, for 2 years, and entered upon the discharge of his duties some time in the month of February, 1839. Haden visited the State of Tennessee on business, and did not return in time to perform the duties of clerk at the March term, 1839. In consequence of his absence, Thomas Sampson, judge of probates, upon the opening of the court of probate, at March term, 1839, appointed Wm. P. Puller to act as clerk pro tem. during the absence of Haden. This deed was recorded by Puller, during the absence of Haden, but after the March term of the court of probate, not while the said court was in session. Haden afterwards returned and resumed the duties of his office. The above described property was, by the trustee, left in the possession of James Carter & Co.

At the May term, 1838, of this court, judgment in the above entitled case was obtained against the said James Carter & Co. Execution was issued upon this judgment, and was levied on the above named negroes, in the possession of James Carter & Co. Upon the levy being made, the trustee came forward and claimed this property, gave the necessary bond, and this issue is now before the court to try the right to the said slaves.

If the deed in trust was properly and legally recorded, then it is admitted that the judgment in the above case is no lien upon said slaves, and that the trustee will be entitled to the same; otherwise, if the deed was not duly and legally recorded, the said slaves are subject to the satisfaction of the said judgment.

The trustee, Moore, died before the levy was made. Stephen Cocke was appointed trustee to execute the trust contained in the deed, and is the claimant in the above entitled case.

HIS APPOINTMENT.

THE STATE OF MISSISSIPPI,
Superior Court of Chancery of the State of Mississippi, January Term, 1839.

Exparte.

The Commercial Bank of Columbus, Mississippi, and John Huddleston, Adm'r, and Charity Moore, Adm'x of Wm. L. Moore, deceased, on petition for the appointment of a trustee.

This day came the petitioners, by their solicitor, and filed their petition, praying that a trustee may be appointed in the room of Wm.

L. Moore, deceased, to carry into effect the provisions of a certain deed of trust executed by James Carter and Lewis Grigsby to said Wm. L. Moore, as trustee, for the benefit of the said Commercial Bank of Columbus, Mississippi, bearing date the 24th day of March, A. D. 1838, and recorded in the clerk's office of the probate court of Lowndes county, in book No. 9, pages 203, 4, 5, 6 and 7. And it appearing to the satisfaction of the court that the said Moore, trustee as aforesaid, has departed this life, without having executed said trust, and it being suggested by all parties that Stephen Cocke is a suitable person to carry the provisions of said trust deed into effect, it is therefore ordered that Stephen Cocke be, and he is hereby appointed, trustee, in the room of the said Wm. L. Moore, deceased, who was trustee named in said deed of trust, with all the power and authority to execute the same, as is therein and thereby given to the original trustee.

I, Richard L. Dixon, clerk of said court, do hereby certify the foregoing to be a true extract from the minutes of said court.

In testimony whereof I have hereunto set my hand and the [SEAL.] seal of said court, the 2nd day of April, A. D. 1839.

R. L. DIXON, *Clerk.*

By THOS. F. SHEPHERD, *D. C.*

THE STATE OF MISSISSIPPI, *Lowndes County.*

I, Robert D. Haden, clerk of the probates court for said county, do hereby certify that the foregoing and within order of the superior court of chancery was deposited in my office for record on the 9th day of April, 1839; and the same, with the certificate of the clerk of said court, and this certificate, have been duly recorded in book No. 13, pages 35 and 36.

Given under my hand and seal of office, the 9th day of April, A. D. 1839.

R. D. HADEN, *Clerk.* [SEAL.]

These facts being agreed upon, the counsel in this cause have agreed to refer the question of law to this court.

TUCKER & BUTTERWORTH, *Atto's.*

STEPHEN COCKE, *Claimant.*

Nov. 18, 1839.

And this court having considered of the same, doth adjudge, that the said trust deed was not duly and legally recorded, and that the said acts and proceedings of the said Wm. P. Puller, as clerk pro tem., in the recording of said trust deed, was without authority of law, and is altogether void, and so instructs the jury; to which opinion and instructions of the court the said Stephen Cocke excepts in law, before the jury retire from the bar to consider of their verdict, and tenders to this court this his bill of exceptions, and prays that

the same may be signed and sealed, and made part of the record in this case; and the above being all the evidence to this point in the case, the same is done accordingly, and before the jury retire from the bar.

S. J. GHOLSON. [SEAL.]

Therefore, it is considered by the court that the said Halsey, Utter, & Co. (the plaintiffs) do recover against the said Stephen Cocke, claimant as aforesaid, the said negro slaves, Leantha, Dinah, Esther, and Mary, if the said plaintiffs can have the same delivered to them; and if the same cannot be delivered to them, then the aforesaid sum of two thousand one hundred dollars, for the value of the said slaves, by the jurors aforesaid, in form aforesaid assessed; also their costs and charges by them in this behalf expended.

And the said Stephen Cocke, in mercy, &c.

UNITED STATES OF AMERICA,
Southern District of Mississippi, sct:

Circuit Court of the United States for the District aforesaid.

I, William Burns, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the foregoing seventeen pages to contain a true, full, and complete transcript of the record and proceedings in a certain issue to try the right of property lately determined in our said court, between the parties therein named, as fully and completely as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, this 20th day of [L. S.] December, A. D. 1839, and in the 64th year of the independence of the said United States.

WM. BURNS, *Clerk.*